

Members

Sen. Richard Bray, Chairperson  
Sen. David Long  
Sen. John Broden  
Sen. Timothy Lanane  
Rep. Robert Kuzman, Vice-Chairperson  
Rep. Ryan Dvorak  
Rep. Ralph Ayres  
Rep. Kathy Richardson  
Judge Ernest Yelton  
David A. Lewis  
Tim Curley  
Thomas R. Philpot  
Chief Justice Randall Shepard



## COMMISSION ON COURTS

*Legislative Services Agency*  
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Indianapolis, Indiana 46204-2789  
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LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
Commission  
Timothy Tyler, Attorney for the Commission

Authority: IC 33-1-15

### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 6, 2004  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 404  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 3

**Members Present:** Sen. Richard Bray, Chairperson; Sen. Timothy Lanane; Rep. Robert Kuzman, Vice-Chairperson; Rep. Ryan Dvorak; Rep. Ralph Ayres; Judge Ernest Yelton; Thomas R. Philpot; Chief Justice Randall Shepard.

**Members Absent:** Sen. David Long; Sen. John Broden; Rep. Kathy Richardson; David A. Lewis; Tim Curley.

Senator Bray called the final meeting of the Commission on Courts to order at 1:15 p.m. After introduction of the members, the Commission members reviewed and approved the minutes of the meeting held on September 8, 2004.

Added Fee for Certified Mail. The Commission members reviewed a proposal from the previous interim to increase the certified mailing fee from the current \$5 to \$10. Attachment A includes a letter from Rep. Richardson, the introduced version of HB 1304--2004, and the fiscal note for the bill.

The members discussed whether the bill would increase the administrative burden on court and clerk staff and whether the fee should be limited to either a flat \$10 or depend on the number of defendants being notified. The Commission recommended that added costs of certified mailings be paid by the parties requesting certified mail. The Commission would leave to Rep. Richardson the details in developing acceptable language to be introduced in the 2005 General Assembly.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Changes in Bankruptcy Law: The Indiana State Bar Association Bankruptcy & Creditors' Rights Section presented a written proposal to add new assets that a person filing for personal bankruptcy may protect from creditors and to double the dollar amount of exempted assets that an individual filing for bankruptcy may protect from creditors. (See Attachment B.) Elliot Levin and Thomas Allington, representing the State Bar Association, testified that these changes are needed because:

- some types of monetary assets, such as a Roth IRA, did not exist when the statute was last amended in 1980, and
- because the value of exempted amounts that current statute allows parties filing for bankruptcy to protect in 2004 is roughly half of what parties filing for bankruptcy could protect in 1980.

Sonja Kriegsmann, representing the Indiana Bankers Association, indicated that she had discussed these changes with the representatives of the State Bar Association and had no objections to these changes.

The Commission members voted to recommend that these proposed changes be introduced in the 2005 General Assembly.

Changes in Senior Judge Per Diems from \$100 to \$200. Chief Justice Shepard proposed changing senior judge per diem from the current maximum of \$100 to \$200. Chief Justice Shepard told the Commission members that, although cases continue to increase, the General Assembly is not likely to create any new courts during the 2005 General Assembly due to the state's fiscal constraints. Consequently, the Supreme Court proposes increasing the maximum per diem that senior judges may receive, from the current \$100 to \$200. He told the Commission members that the added per diem would provide more incentive for retired judges to work as senior judges in counties with a large number of pending cases.

The Commission recommended this change be introduced in the 2005 General Assembly.

Expanding Jury Pools by Adding the Statewide Voter Registration List. Chief Justice Shepard also proposed broadening the jury pool by allowing the Indiana Supreme Court to have access to the voter registration records that are maintained by the Secretary of State. Currently, the courts have access to records from the Department of Revenue and Bureau of Motor Vehicles.

The Commission members recommended legislation that would allow the Indiana Supreme Court to find ways to expand the jury pool by using statewide voting records, including date of birth of the registered voter.

Delaware County Magistrate. Judge Wayne Lennington, Delaware Circuit Court #5, petitioned the Commission for a magistrate. He told the Commission members that besides Delaware County's five judges, three commissioners and a senior judge are used. According to the 2003 weighted caseload study, Delaware County ranks 60<sup>th</sup> of 92 counties.

When examining the distribution of workload between courts, the following table shows that the workload is not distributed in an equitable manner.

<b>Delaware County Courts</b>	<b>Utilization Rate</b>
Circuit 1	1.03
Circuit 2	1.11
Circuit 3	0.56
Circuit 4	1.51
Circuit 5	1.16

The Commission members recommended that the judges in the Delaware County Circuit Court change the current statute to allow small claims cases to be filed in all courts in Delaware County and to distribute civil cases more equally among the courts in Delaware County.

Staff Reports. Mark Goodpaster presented two staff reports to the Commission on Courts concerning a survey of fees charged by courts and the fiscal implications of traffic infractions that are disposed in city and town courts. These reports are included as Attachments C and D.

Review and Approval of Final Report. The Commission members reviewed and approved a draft of the final report. The vote was 10 to 0 in favor of approval of the final report.

The meeting was adjourned at 3:00 p.m.

**STATE OF INDIANA**  
**HOUSE OF REPRESENTATIVES**  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204

Kathy Kreag Richardson  
Republican Caucus Chairman  
1363 Grant Street  
Noblesville, IN 46060  
website: [www.in.gov/h29](http://www.in.gov/h29)

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Committee:  
Elections and Apportionment  
Statutory Ethics Committee  
Legislative Council

September 29, 2004

The Honorable Richard D. Bray, Ranking Member  
Commission on Courts  
200 West Washington Street; Room 4D-N  
Indianapolis, IN 46204

Dear Senator Bray,

I regret that I will be unable to attend the 3<sup>rd</sup> scheduled meeting of the Commission on Courts, as I will be in Evansville at the Association of Indiana Counties Annual Conference. In addition, I want to give you warning that a great many people who have a vested interest in the topic at hand will also be attending this conference and will also be unable to attend.

That said, I appreciate the Commission's further review of the certified mail fee issue that was discussed near the end of last summer. As you know, a bill will go into effect in July of 2005 that allows for a \$5 service fee in small claims actions to help recover costs incurred by courts in the notification of defendants by certified mail. The need for expanding this allowance to other civil actions is obvious, and your willingness to hear debate in the Commission on Courts is very important to the future passage of legislation on this matter. I hope to introduce a bill this session, with the Commission's full support, to alleviate this financial burden on our courts.

Again, I thank you for your support. If I can be of any assistance on this issue, please do not hesitate to contact me.



Sincerely,

Kathy Richardson  
Republican Caucus Chair

KKR:MB



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Introduced Version

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# HOUSE BILL No. 1302

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## DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-19.

**Synopsis:** Service fees. Provides for the collection of a \$10 service fee in small claims and civil actions. (The introduced version of this bill was prepared by the commission on courts.)

**Effective:** July 1, 2004; July 1, 2005.

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**Richardson, Dvorak**

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January 15, 2004, read first time and referred to Committee on Courts and Criminal Code.

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HB 1302—LS 6374/DI 105



Introduced

Second Regular Session 113th General Assembly (2004)

**PRINTING CODE.** Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in ~~this style type~~:

**Additions:** Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

**Conflict reconciliation:** Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1302

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**A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.**

*Be it enacted by the General Assembly of the State of Indiana:*

1        **SECTION 1. IC 33-19-5-4, AS AMENDED BY P.L.1-2002,**  
2        **SECTION 136, IS AMENDED TO READ AS FOLLOWS**  
3        **[EFFECTIVE JULY 1, 2004]: Sec. 4. (a) For each civil action**  
4        **except:**

- 5                (1) proceedings to enforce a statute defining an infraction  
6                under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);  
7                (2) proceedings to enforce an ordinance under IC 34-28-5-4  
8                (or IC 34-4-32-4 before its repeal);  
9                (3) proceedings in juvenile court under IC 31-34 or IC 31-37;  
10                (4) proceedings in paternity under IC 31-14;  
11                (5) proceedings in small claims court under IC 33-11.6; and  
12                (6) proceedings in actions under section 6 of this chapter;

13        **the clerk shall collect from the party filing the action a civil costs**  
14        **fee of one hundred dollars (\$100).**

15                (b) In addition to the civil costs fee collected under this section,  
16        **the clerk shall collect the following fees if they are required under**  
17        **IC 33-19-6:**

2004

IN 1302—LS 6374/DI 105



- (1) A document fee.
- (2) A support and maintenance fee.
- (3) A document storage fee (IC 33-19-6-18.1).
- (4) An automated record keeping fee (IC 33-19-6-19).
- (5) A service fee (IC 33-19-6-23).

SECTION 2. IC 33-19-5-5, AS AMENDED BY P.L.167-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a:

- (1) small claims costs fee of thirty-five dollars (\$35); and
- (2) small claims service fee of ~~five dollars (\$5)~~ ten dollars (\$10) for each defendant named or added in the small claims action.

However, a clerk may not collect a small claims costs fee or small claims service fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee and small claims service fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-19-6:

- (1) A document fee.
- (2) A document storage fee (IC 33-19-6-18.1).
- (3) An automated record keeping fee (IC 33-19-6-19).

SECTION 3. IC 33-19-6-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 23. (a) This section applies to a civil action described in IC 33-19-5-4(a).

(b) The clerk shall collect from the party filing the civil action a service fee of ten dollars (\$10) for each defendant named or added in the civil action.

SECTION 4. IC 33-19-7-1, AS AMENDED BY P.L.167-2003, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-19-5-1(a) (criminal costs fees).
- (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-19-5-3(a) (juvenile costs fees).
- (4) IC 33-19-5-4(a) (civil costs fees).
- (5) IC 33-19-5-5(a)(1) (small claims costs fees).
- (6) IC 33-19-5-6(a) (probate costs fees).
- (7) IC 33-19-6-16.2 (deferred prosecution fees).

(b) The clerk of a circuit court shall semiannually distribute to



the auditor of state for deposit in the state user fee fund established under IC 33-19-9-2 the following:

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-19-5-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected under IC 33-19-6-16.3.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-19-6-19).

(c) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-19-5-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-19-5-1(b)(6), IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall monthly distribute to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-19-5-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-19-6-20. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-19-6-1.5 and sixty percent (60%) of





the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance under subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall semiannually distribute to the auditor of state for deposit in the sexual assault victims assistance fund established under IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-19-6-21.

(g) The clerk of a circuit court shall monthly distribute to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-19-6-5.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-19-6-5 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall monthly distribute to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-19-6-5 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall monthly distribute to the county auditor one hundred percent (100%) of the small claims service fee under IC 33-19-5-5(a)(2) for deposit in the county general fund.

(i) The clerk shall distribute monthly to the county auditor or the city or town fiscal officer one hundred percent (100%) of the service fee under IC 33-19-6-23 for deposit in the county general fund or the city or town general fund.

SECTION 5. [EFFECTIVE JULY 1, 2004] (a) In addition to the collection required by IC 33-19-5-5(a), as in effect July 1, 2004, the clerk shall collect a small claims service fee of ten dollars (\$10) for each defendant named or added in a small claims action.

(b) In addition to the distribution required by IC 33-19-7-1(i), as in effect July 1, 2004, the clerk shall distribute monthly to the county auditor or city or town fiscal officer one hundred percent (100%) of the service fee under IC 33-19-6-23 for deposit in the county general fund or the city or town general fund.

(c) This SECTION expires June 30, 2005.



**LEGISLATIVE SERVICES AGENCY**  
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**FISCAL IMPACT STATEMENT**

**LS 6374**  
**BILL NUMBER: HB 1302**

**NOTE PREPARED: Dec 4, 2003**  
**BILL AMENDED:**

**SUBJECT: Service Fees.**

**FIRST AUTHOR: Rep. Richardson**  
**FIRST SPONSOR:**

**BILL STATUS: As Introduced**

**FUNDS AFFECTED:      GENERAL**  
                                  **DEDICATED**  
                                  **FEDERAL**

**IMPACT: Local**

**Summary of Legislation:** This bill provides for the collection of a \$10 service fee in small claims and civil actions. (The introduced version of this bill was prepared by the Commission on Courts.)

**Effective Date:** July 1, 2004; July 1, 2005.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Summary:* Depending on the number of defendants named in these cases, this bill is estimated to generate new revenue over that provided under current statute in the following amounts:



Calendar Year	Low Estimate (\$ M) *	High Estimate (\$ M) *
2004	??	??
2005	??	??
2006 and following years	??	??
* The average number of defendants named in civil actions covered by this bill is unknown. The low estimate is based on an average of one defendant named; the high estimate is based on an average of two defendants.		

Under current law, a person filing a small claims action, effective July 1, 2005, will be billed a service fee of \$5 for each defendant named in a case. As proposed, a \$10 fee for each defendant named in a small claims action will become effective July 1, 2004.

This bill would also impose a \$10 service fee for each defendant named or added to a civil action, effective July 1, 2004. For this estimate, civil actions include plenary filings, mortgage foreclosures, civil collections, torts, domestic relations, reciprocal support, mental health, protective orders, and miscellaneous cases.

*Background:* The following table is the basis for estimating the additional revenue that this bill could generate.

Cases	1998	1999	2000	2001	2002	Five-Year Average
Civil	174,365	173,596	187,806	201,753	217,982	191,100
Small Claims	287,828	282,218	289,964	305,776	290,493	291,256

The average number of defendants named in civil and small claims cases is not reported in published form. The following tables assume that the average number of defendants involved in these cases is between one and two. Based on this five-year average, the estimated revenue for the last six months of CY 2004 could range between \$2.4 M and \$4.8 M depending on the number of respondents who are involved in these cases.



					Potential Revenue in \$M	
	Filings		Added Fee		For One Respondent	For Two Respondents
Civil	??	x	\$10	=	ERR	ERR
Small Claims	??	x	\$10	=	ERR	ERR
Total New Revenue for last six months of CY 2004					\$0.00	\$0.00

For CY 2005, the new revenue is estimated to be between \$4.1 M and \$8.2 M. Note that the new small claims service fee of \$10 represents a \$10 increase over current statute for January through June of 2005 and a \$5 increase over current statute for July through December 2005 (to account for the \$5 that will already become effective on July 1, 2005).

					Potential Revenue in \$M	
	Filings		Added Fee		For One Respondent	For Two Respondents
Civil	??	x	\$10	=	ERR	ERR
Small Claims (January thru June)	??	x	\$10	=	ERR	ERR
Small Claims (July thru December)	ERR	x	\$5	=	<u>ERR</u>	<u>ERR</u>
Total New Revenue for Calendar Year 2005					<u>\$0.00</u>	<u>\$0.00</u>

For CY 2006 and each following year, the added \$5 fees for small claims and \$10 for civil actions could generate between \$3.4 M and \$6.7 M.

					Potential Revenue in \$M	
	Filings		Added Fee		For One Respondent	For Two Respondents
Civil	??	x	\$10	=	ERR	ERR
Small Claims	??	x	\$5	=	ERR	ERR
Total New Revenue for CY 2006 and following years					\$0.00	\$0.00

The proceeds from the small claims service fees are deposited in the county general fund, while the civil



action service fees are deposited in either the county, city, or town general fund.

**State Agencies Affected:**

**Local Agencies Affected:** All courts of record with civil and small claims jurisdiction.

**Information Sources:** *2002 Indiana Judicial Service Report*, Volume 1, Executive Summary.

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.



**Proposed Amendments to the Indiana Exemption Statute**

**Indiana State Bar Association  
Bankruptcy & Creditors' Rights Section  
Committee on Amendments to the Indiana Exemption Statute**

**SECTION 1. DEFINITIONS (New Section)**

**As used in this chapter, unless the context otherwise requires:**

**(1) "Debt" means a legally or equitably enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.**

**(2) "Exempt" means protected, and "exemption" means protection, from subjection to a judicial lien, process, or proceeding to collect a debt.**

**(3) "Judicial lien" means a lien on property obtained by judgment, levy, or other legal or equitable process or proceeding instituted for the purpose of collecting a debt.**

**(4) "Levy" means the seizure of property pursuant to a writ of attachment, garnishment, execution, or any similar legal or equitable process issued for the purpose of collecting a debt.**

**(5) "Lien" means a security interest, or a judicial, statutory, or common law lien, or any other interest in property, securing payment of a debt or performance of an obligation.**

**(6) "Security interest" means an interest in property created by contract to secure payment of a debt or performance of an obligation.**

**Comment:** The definition of "debt" expands the "contract or tort claim" language in § 34-55-10-2(b) of the current statute to include obligations arising out of contract, tort, "or otherwise."

"Judicial lien" and "levy" are defined broadly enough to include pre-judgment attachment and garnishment. Thus, exempt property is protected from both pre-judgment and post-judgment remedies. See also, Ind. Code §§ 34-25-2-9 and -10, referring to attachment of property "subject to execution".

## **Proposed Amendments to the Indiana Exemption Statute**

1  
2

1 SECTION 2. IC 34-55-10-1, AS ADDED BY P.L. 1-1998, SECTION 51, IS  
2 AMENDED TO READ AS FOLLOWS:

3  
4 Sec. 1. In accordance with section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C.  
5 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Indiana:

6  
7 ~~(1) is not entitled to the federal exemptions as provided by section 522(d) of~~  
8 ~~the Bankruptcy Code of 1978 (11 U.S.C. 522(d)); and~~

9  
10 ~~(2) may exempt from the property of the estate only that property specified~~  
11 ~~by Indiana law.~~

12  
13 Comment: The deleted paragraph is inconsistent with Bankruptcy Code  
14 § 522(b)(2)(A), which states that debtors in opt-out states  
15 may exempt, in addition to property exempt under state law,  
16 any property that is exempt under non-bankruptcy federal  
17 law.

18  
19  
20 SECTION 3. IC 34-55-10-2, AS ADDED BY P.L. 1-1998, SECTION 51, IS  
21 AMENDED TO READ AS FOLLOWS:

22  
23 Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

24  
25  
26 1 (b) The following property of a judgment an individual debtor domiciled in  
27 Indiana is not subject to levy or sale on execution or any other final process from a  
28 court, for a judgment founded upon an express or implied contract or a tort claim  
29 exempt:

30 2

31 Comment: The term "individual debtor" is substituted for "judgment  
32 debtor" because the exemptions apply to pre-judgment  
33 remedies as well as post-judgment remedies and are not  
34 applicable to entities other than individuals. The term  
35 "exempt" is defined in Section 1.

36  
37 (1) Real estate or personal property constituting the personal or family residence  
38 of the judgment debtor or a dependent of the judgment debtor, or estates or  
39 rights in that real estate or personal property, of not more than seven thousand  
40 five hundred dollars (\$7,500) fifteen thousand dollars (\$15,000). The exemption  
41 under this subsection paragraph is individually available to joint judgment  
42 debtors concerning property held by them as tenants by the entireties.

43  
44 Comment: The \$7,500 limit was enacted in 1980. The proposed  
45 increase to \$15,000 is slightly less than the amount that  
46 would account for inflation since 1980 (\$7,500 adjusted for  
47 change in the consumer price index from 1980 to June 2004



1 equals \$17,075).

2  
3 (2) Other real estate or tangible personal property of ~~four thousand dollars~~  
4 ~~(\$4,000)~~ eight thousand dollars (\$8,000).

5  
6 Comment: The \$4,000 limit was enacted in 1980. The proposed  
7 increase to \$8,000 is slightly less than the amount that  
8 would account for inflation since 1980 (\$4,000 adjusted for  
9 change in the consumer price index from 1980 to June 2004  
10 equals \$9,107).

11  
12 (3) Intangible personal property, including choses in action, deposit accounts  
13 and cash (but excluding debts owing and income owing), of ~~one hundred dollars~~  
14 ~~(\$100)~~ three hundred dollars (\$300).

15  
16 Comment: The proposed amendment clarifies that money is intangible  
17 property whether held in the form of cash or a deposit  
18 account. The Seventh Circuit Court of Appeals reached the  
19 same result under the present statute in *In re Oakley*, 344  
20 F.3d 709 (7th Cir. 2003).

21  
22 The \$100 limit was enacted in 1977. The proposed increase  
23 to \$300 is slightly less than the amount that would account  
24 for inflation occurring since 1977 (\$100 adjusted for change  
25 in the consumer price index from 1977 to June 2004 equals  
26 \$310).

27  
28 (4) Professionally prescribed health aids for the judgment debtor or a dependent  
29 of the judgment debtor.

30  
31 (5) Any interest that the judgment debtor has in real estate held as a tenant by  
32 the entirety ~~on the date of the filing of the petition for relief under the~~  
33 ~~bankruptcy code, unless a joint petition for relief is filed by the judgment debtor~~  
34 ~~and spouse, or individual petitions of the judgment debtor and spouse are~~  
35 ~~subsequently consolidated.~~ The exemption under this paragraph shall not apply  
36 with respect to debts for which the debtor and the debtor's spouse are jointly  
37 liable.

38  
39 Comment: The proposed amendment conforms this paragraph to the  
40 traditional common law rule that property held in a tenancy  
41 by the entirety is immune to seizure for the satisfaction of a  
42 spouse's separate debts, but may be taken to satisfy debts  
43 on which spouses are jointly liable. The present statute  
44 provides for complete exemption of entireties property when  
45 only one spouse files bankruptcy, even if there are debts on  
46 which the spouses are jointly liable. Section 522(b)(2)(B) of  
47 the Bankruptcy Code provides that in states opting out of  
48 the exemptions under Bankruptcy Code § 522(d), debtors in  
49 bankruptcy are entitled to exempt entireties property to the

## **Proposed Amendments to the Indiana Exemption Statute**

1 extent such property “is exempt from process under  
2 applicable nonbankruptcy law.” Because the current statute  
3 provides a greater exemption for entireties property in  
4 bankruptcy than outside of bankruptcy, the bankruptcy court  
5 in *In re Cross*, 255 B.R. 25 (Bankr. N.D. Ind. 2000), concluded  
6 that the statute violated the supremacy clause of the United  
7 States constitution. The proposed amendment provides a  
8 uniform rule inside and outside of bankruptcy, thereby  
9 eliminating this constitutional issue.  
10  
11  
12

(6) An interest, whether vested or not, that the judgment debtor has in a retirement plan or fund to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan or fund:

(i) by or on behalf of the debtor, and

(ii) (i) which were not subject to federal income taxation to the debtor at the time of the contribution; or

(ii) which were made to an individual retirement account within the limitations of section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment levy; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the judgment levy.

**Comment:** This amendment expands the exemption for retirement plans to include Roth IRAs. Traditional IRAs are exempt under the current statute to the extent they are funded with deductible contributions but retirement savings in Roth IRAs are not exempt because contributions are not deductible for income tax purposes. See *Moncel v. Chosnek*, 307 B.R. 921 (N.D. Ind. 2004) (funds rolled over from a traditional IRA to a Roth IRA prior to bankruptcy are not exempt). Contributions to Roth IRAs are generally limited by Internal Revenue Code § 408A in the same way as contributions to traditional IRAs, currently \$3,000 per year (\$3,500 for those over age 50). Earnings accumulate tax-free as in a regular IRA, and are not taxable on withdrawal after age 59½ if the account has been in existence for at least five years.

(7) Money in a medical care savings account established under Indiana Code 6-8-11.

~~2(c) The total value of the property exempted under subsection (b)(1) through (b)(3) may not exceed ten thousand dollars (\$10,000). The commencement of a bankruptcy case that results in ownership by the bankruptcy estate of the debtor's interest in property held in a tenancy by the entirety shall not be considered as resulting in a severance of the tenancy by the entirety.~~

**Comment:** Deleting the existing language in this subsection repeals the overall limit on the amount that can be exempted under paragraphs (1), (2), and (3) in subsection (b). The maximum total amount that could be exempted under the proposed

changes to those paragraphs is \$23,300. This amount is only slightly higher than the amount that would account for inflation since the \$10,000 limit was adopted in 1980 (\$10,000 adjusted for change in the consumer price index from 1980 to June 2004 equals \$23,022).

The proposed new language is intended to make it clear that property owned in a tenancy by the entirety retains its status as such under state law when one or both tenants becomes a debtor in bankruptcy. The purpose is to forestall any contention that tenancy by the entirety property is transformed into a tenancy in common when the interest of a tenant by the entirety becomes property of a bankruptcy estate (an argument that was endorsed by a bankruptcy court in Michigan, *In re Spears*, 308 B.R. 793 (Bankr. W.D. Mich. 2004)). Thus, if one spouse files for bankruptcy, the non-filing spouse's interest in the property will continue to be recognized as a tenancy by the entirety, as will any interest in the property the filing spouse is allowed to exempt from the bankruptcy estate under Bankruptcy Code § 522(b)(2)(B).

**1(d) Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:**

**2**

**(1) subject to this chapter; or**

**3**

**(2) exempt from levy or sale on execution or any other final process from a court.**

#### **SECTION 4. ADJUSTMENT OF DOLLAR AMOUNTS (New Section)**

**(a) On May 1, 2010, and at each 6-year interval ending on May 1 thereafter, each dollar amount in effect under this chapter immediately before such May 1 shall be adjusted:**

**(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most recent 6-year period ending immediately before January 1 preceding such May 1, and**

**(2) to round to the nearest fifty dollars (\$50) the dollar amount that represents such change.**

**(b) The Indiana Department of Financial Institutions shall adopt a rule announcing on or before March 1 of each year in which dollar amounts are to change, the changes required by subsection (a).**

Comment: This section is patterned after Bankruptcy Code § 104. It proposes to use the CPI for All Urban Consumers (CPI-U), which is the broadest consumer price index, representing about 87% of the total U.S. population. The Indiana Department of Financial Institutions is designated to compute the adjustments because that agency also has responsibility for implementing CPI adjustments to amounts under the Uniform Consumer Credit Code. See Ind. Code § 24-4.5-1-106.

**SECTION 5. IC 34-55-10-4, AS ADDED BY P.L. 1-1998, SECTION 51, IS AMENDED TO READ AS FOLLOWS:**

**Sec. 4. For the appraisal of any property to be exempted under this chapter, two (2) ~~disinterested householders of the neighborhood~~ appraisers shall be chosen, one (1) by the plaintiff or the plaintiff's agent or attorney, and one (1) by the judgment debtor. These two (2), in case of disagreement, shall select a third. If either party fails to select an appraiser, one (1) shall be selected by the officer holding the execution.**

Comment: The proposed amendment allows selection of appraisers who are not "householders of the neighborhood", such as professional appraisers.

**SECTION 6. IC 34-55-10-5, AS ADDED BY P.L. 1-1998, SECTION 51, IS AMENDED TO READ AS FOLLOWS:**

**Sec. 5. The appraisers shall make a schedule of the real and personal property selected by the judgment debtor, describing the real estate by metes and bounds, and the personal property by separate items, affixing to each the value they agree upon. The appraisers, or a majority, shall affix to the schedule an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the property described in the schedule above is valued justly."**

**SECTION 7. IC 34-55-10-7, AS ADDED BY P.L. 1-1998, SECTION 51, IS REPEALED**

**~~Sec. 7. Each appraiser, for the appraiser's services, shall be allowed the sum of fifty cents (\$0.50), to be paid by the judgment debtor.~~**

Comment: This section is proposed to be repealed as antiquated and unnecessary.

**SECTION 8. IC 34-55-10-9, AS ADDED BY P.L. 1-1998, SECTION 51, IS**

1 AMENDED TO READ AS FOLLOWS:

2  
3 Sec. 9. (a) ~~If the claim of the judgment debtor as exempt from execution includes~~  
4 ~~both real and personal property, the officer holding the execution shall proceed to~~  
5 ~~have the personal property appraised and set apart to the judgment debtor, and~~  
6 ~~then have the real property claimed appraised. If the amount of both appraisals~~  
7 ~~exceeds six hundred dollars (\$600), the debtor may, within sixty (60) days after the~~  
8 ~~appraisals, pay the excess or an amount sufficient to satisfy the execution. However,~~  
9 ~~if the debtor fails to do so, the officer shall proceed to sell the real property as other~~  
10 ~~real property is sold on execution, if the execution authorizes the sale of the~~  
11 ~~property. If the value of the debtor's interest in property with respect to which an~~  
12 ~~exemption is claimed exceeds the amount allowed as exempt, the property may be~~  
13 ~~sold but the debtor shall be paid, from the proceeds of the sale, an amount equal to~~  
14 ~~the debtor's exemption in the property.~~

15  
16 (b) ~~In making the sale under subsection (a), the officer may not receive accept a bid~~  
17 ~~unless the bid exceeds the difference between six hundred dollars (\$600) and the~~  
18 ~~appraisal of the personal property set apart to the judgment debtor exempt value of~~  
19 ~~the property. If indebtedness secured by a valid lien is chargeable against the~~  
20 ~~proceeds of the sale, a bid shall not be accepted if it is less than the amount of the~~  
21 ~~indebtedness secured plus the exempt value of the property. If the officer sells the~~  
22 ~~real property, the officer shall pay over to the judgment debtor the amount of the~~  
23 ~~difference, and of the remainder, apply upon the execution enough to satisfy the~~  
24 ~~execution, and pay the balance, if any, to the judgment debtor or to such other party~~  
25 ~~entitled to the balance.~~

26  
27  
28 Comment: The proposed amendment makes this section consistent  
29 with Ind. Code § 34-55-10-2(b). It also clarifies that in a  
30 forced sale of the debtor's property for more than the  
31 amount allowed as exempt, the debtor is entitled to receive  
32 from the proceeds an amount equal to the debtor's  
33 exemption in the property.  
34  
35

36 SECTION 9. IC 34-55-10-10, AS ADDED BY P.L. 1-1998, SECTION 51, IS  
37 REPEALED

38  
39 Sec. 10. ~~If the judgment debtor claims as exempt from the execution real property~~  
40 ~~only, the real property shall be appraised, and if its appraised value exceeds six~~  
41 ~~hundred dollars (\$600), the real property shall be sold if there is a bid for more than~~  
42 ~~six hundred dollars (\$600). If sold, the officer shall pay to the judgment debtor six~~  
43 ~~hundred dollars (\$600), and the remainder of the purchase money shall be disposed~~  
44 ~~of as provided in section 9 of this chapter.~~  
45

**Proposed Amendments to the Indiana Exemption Statute**

**Comment:** The substance of this section is incorporated into the proposed amendment to the preceding section.

**SECTION 10. IC 34-55-10-12, AS ADDED BY P.L. 1-1998, SECTION 51, IS AMENDED TO READ AS FOLLOWS:**

**Sec. 12.** Before a judgment debtor receives the benefit of the exemption provided by this chapter, the judgment debtor shall deliver to the officer holding the execution a schedule of all the judgment debtor's property, as required by law, if an exemption from sale on execution is claimed.

**SECTION 11. EFFECTIVE DATE**

**The amendments made by this Act shall become effective on July 1, 2005.**







## Proposed Amendments to the Indiana Exemption Statute

### Comparison of Proposed Amendments to the Exemption Statute With Current Law and the Bankruptcy Code

Current Law	Proposed Amendments	Bankruptcy Code § 522(d)*
Personal residence: \$7,500	Personal residence: \$15,000	Personal residence: \$18,450
Other real or tangible personal property: \$4,000	Other real or tangible personal property: \$8,000	Motor vehicle: \$2,950 Tools of the trade: \$1,850 Household goods, animals, crops, musical instruments: \$9,850 Jewelry: \$1,225
Intangible property: \$100	Intangible property: \$300	Any property (wild card): \$975 plus up to \$9,250 of unused personal residence exemption
Overall limit of \$10,000 on the above	No overall limit on the above. Total could be a maximum of \$23,300.	No overall limit on the above. Total could be a maximum of \$35,300
Professionally prescribed health aids	Professionally prescribed health aids	Professionally prescribed health aids
Medical care savings account	Medical care savings account	
Tenancy by entirety property is exempt in bankruptcy unless the owners file jointly or their cases are consolidated	Tenancy by entirety property is exempt except with respect to joint debts	
Tax deferred retirement plan	Tax deferred retirement plan or Roth IRA	Tax deferred retirement plan, to the extent necessary for support
		Social security, unemployment, local public assistance, veterans' benefits
		Disability, illness, or unemployment benefit
		Alimony or support, to the extent necessary for support
		Wrongful death recovery, to the extent necessary for support
		Payment up to \$18,450 for bodily injury, other than pain and suffering or actual pecuniary loss
		Payment for loss of future earnings, to the extent necessary for support

\* Values effective April 1, 2004. Notice dated February 18, 2004, 69 F.R. 8142.



Members

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 Sen. John Broden  
 Sen. Timothy Lanane  
 Rep. Robert Kuzman, Vice-Chairperson  
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## COMMISSION ON COURTS

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LSA Staff:

Mark Goodpaster, Fiscal Analyst for the  
 Commission  
 Timothy Tyler, Attorney for the Commission

Authority: IC 33-1-15

**To: Rep. Robert Kuzman**  
**From: Mark Goodpaster**  
**Date: October 4, 2004**  
**Re: Compilation of Court Fees**

Based on your request at the Commission on Courts meeting on August 11<sup>th</sup>, I compiled a list of fees that are charged by courts of record in criminal, civil and juvenile proceedings that are deposited into general and dedicated funds at both the state and county level.

In summary, I identified ten fees in which the revenue is split between the state and local funds, seven fees that are deposited exclusively in state funds and 25 that are deposited in county funds.

**Court Cost Fees:** The revenue from court cost fees -- which are charged when a plaintiff files a civil case or when a defendant in a criminal, infractions or ordinance violation case is found guilty -- are all 70% between the state general fund and the Local General Funds. The State General Fund receives 70% while the local general funds receive 30%.

State General Fund		Percent Split	
		<u>State Share</u>	<u>Local Share</u>
1.	Criminal Costs Fee	70%	30%
2.	Infraction or Ordinance Violation Costs Fee	70%	30%
3.	Juvenile Costs Fee	70%	30%
4.	Civil Costs Fee	70%	30%

State General Fund		Percent Split	
		<u>State Share</u>	<u>Local Share</u>
5.	Small Claims Costs Fee	70%	30%
6.	Probate Costs Fee	70%	30%
7.	Interstate Compact Fee	50%	50%

#### Fees Split Between State User Fee Fund and Counties

State User Fee Fund		Percent Split	
		<u>State</u>	<u>County</u>
1.	Drug Abuse Prosecution Interdiction and Corrections Fee	25%	75%
2.	Alcohol and Drug Countermeasures Fee	25%	75%
3.	Child Abuse Prevention Fee	50%	50%
4.	Marriage License Fee	\$10	\$8 or \$40

#### Fees Exclusively Deposited in State Funds:

Fees Exclusively Deposited in State Funds:	Deposited Into
1. Judicial Administration Fee	State General Fund
2. Judicial Insurance Adjustment Fee	State General Fund
3. Sexual Assault Victims Assistance Fee	Sexual Assault Victims Assistance Fund
4. Domestic Violence Prevention and Treatment Fee	State User Fee Fund
5. Highway Work Zone Fee	State User Fee Fund
6. Safe Schools Fee	State User Fee Fund
7. Automated Record Keeping Fee	State User Fee Fund

#### Fees Deposited into County Funds:

Fees Deposited into County Funds:	Deposited in:
1. Adult Probation User Fees (Felons)	County Supplemental Adult Probation Services Fund

Fees Deposited into County Funds:	Deposited in:
2. Adult Probation User Fees (Misdemeanants)	County Supplemental Adult Probation Services Fund
3. Alcohol and Drug Services Program Fee	County User Fee Fund
4. Alcohol Abuse Deterrent Program Fee	County Alcohol Abuse Deterrent Fund
5. Alternative Dispute Resolution Fee	Alternative Dispute Resolution Fund
6. Bond Administration Fee	County General Fund
7. Credit Card Service	County General Fund
8. Deferral Program Fee	County User Fee Fund
9. Document Fees	County General Fund
10. Document Storage Fee	Clerk's Record Perpetuation Fund
11. Drug Court Fee	County User Fee Fund
12. Guardian Ad Litem Fee	Guardian Ad Litem Fund or Court Appointed Special Advocate Fund
13. Home Detention Fee	County Supplemental Adult Probation Services Fund
14. Informal Adjustment Program Fee	County User Fee Fund
15. Jury Fee	County User Fee Fund
16. Juvenile Probation User Fees	County Supplemental Juvenile Probation Services Fund
17. Late Surrender Fees	Police Pension Trust Fund and County Extradition Fund
18. Late Payment Fee	Clerk's Record Perpetuation Fund
19. Law Enforcement Continuing Education Program Fee	County User Fee Fund
20. Marijuana Eradication Program Fee	County User Fee Fund
21. Medical Fee	County Alcohol Abuse Deterrent Fund
22. Pretrial Diversion Program Fee	County User Fee Fund
23. Small Claims Service Fee	County General Fund
24. Supplemental Public Defender Services Fee (Pretrial)	Supplemental Public Defender Services Fund
25. Supplemental Public Defender Services Fee (Postconviction)	Supplemental Public Defender Services Fund
26. Support Fee	County General Fund

**The accompanying tables list in more detail a description of each fee, it's code cite, the amount that can be charged, and, where available, its revenue history.**

**Fees Assessed by Courts of Record for State and County Programs:**

State General Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Criminal Costs Fee	IC 33-37-4-1	\$120	Felony or Misdemeanor Conviction			
Infraction or Ordinance Violation Costs Fee	IC 33-37-4-2	\$70	Infraction or Ordinance Violation			
Juvenile Costs Fee	IC 33-37-4-3	\$120	juvenile actions	\$43.6	\$52.2	\$49.0
Civil Costs Fee	IC 33-37-4-4	\$100	civil action filings			
Small Claims Costs Fee	IC 33-37-4-5	\$35	small claims filings			
Probate Costs Fee	IC 33-37-4-7	\$120	probate filings			
Judicial Administration Fee	IC 33-37-5-21.2	\$1 before June 30, 2005; \$2 after June 30, 2005	In each action in which a person is: (1) convicted of an offense; (2) required to pay a pretrial diversion fee; (3) found to have violated an infraction; or (4) found to have violated an ordinance;			fee enacted
Judicial Insurance Adjustment Fee	IC 33-37-5-25	\$1	In each action in which a person is: (1) convicted of an offense; (2) required to pay a pretrial diversion fee; (3) found to have violated an infraction; or (4) found to have violated an ordinance;			fee enacted



State User Fee Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Drug Abuse Prosecution Interdiction and Corrections Fee	IC 33-37-5-9	between \$200 and \$1,000	drug-related conviction	\$2.55	\$2.93	\$3.00
Alcohol and Drug Countermeasures Fee	IC 33-37-5-10	\$200	OWI conviction & driver's license suspended			
Child Abuse Prevention Fee	IC 33-37-5-12	\$100	convicted of violent and sexual crime and victim less than 18 years of age			
Domestic Violence Prevention and Treatment Fee	IC 33-37-5-13	\$50	violent act and victim either current or former spouse			
Highway Work Zone Fee	IC 33-37-5-14	\$.50 or \$25.50	traffic offenses (\$25.50 when exceeding a worksite speed limit).			
Marriage License Fee	IC 33-32-5-1	\$18 or \$50	higher fee when neither applicant is an Indiana resident			
Safe Schools Fee	IC 33-37-5-18	between \$200 and \$1,000	when possession or use of a firearm is element of crime			
Automated Record Keeping Fee	IC 33-37-5-21	\$7	all civil filings and all criminal cases where defendant is convicted			
Sexual Assault Victims Assistance Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Sexual Assault Victims Assistance Fee	IC 33-37-5-23	between \$250 and \$1,000	when defendant is convicted of a sex crime			\$0.030

County General Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Court Cost Fees	See State General Fund; Counties Receive Portion of Fee Revenue			\$15.38	\$16.37	\$16.37
Support Fees	IC 33-37-5-6	\$10, \$20 or \$30 depending on when fee is paid	child support cases	\$1.37	\$1.51	\$1.51
Bond Administration Fee	IC 35-33-8-3.2	lesser of 10% of executed bond or \$50 mandatory	when a criminal defendant posts bond for pretrial release without using a surety agent	\$0.89	\$1.13	\$1.13
Document Fees	IC 35-37-5-1	\$1 for authentication of documents \$3 per page transcript of real estate lien		\$0.83	\$0.82	\$0.82
Small Claims Service Fee	IC 33-37-4-6(a)(2)	\$5	for each defendant named in a small claims action	effective July 1, 2001		
Credit Card Service Fee	IC 33-37-6	transaction charge when using a credit card	when a person uses credit card to pay bail; criminal fine; civil penalty; court fee, court cost, or user fee imposed by the court; fee for the preparation, duplication, or transmission of a document	effective July 1, 2001		
Clerk's Record Perpetuation Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Document Storage Fee	IC 33-37-5-20	\$2	all civil, criminal, infraction and ordinance violations			\$0.00
Late Payment Fee	IC 33-37-5-22	\$25	all criminal, infraction and ordinance violations when person fails to pay fee when ordered by court	effective July 1, 2001		

County Supplemental Adult Probation Services Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Interstate Compact Fee	IC 11-13-4.5-4	\$75 (50% deposited in this fund)	when an Indiana offender on probation applies to be transferred out of state under the interstate compact for adult supervision			
Home Detention Fee	IC 35-38-2.5-6	may not exceed amounts specified under IC 11-12-2-12 and 210 IAC 2-1-2	offenders on probation and who are home detention			
Adult Probation User Fees (Felons)	IC 35-38-2-1(d)	initial \$25 to \$100 monthly \$15 to \$30 adm. fee \$100	mandatory for adult felons placed on probation	\$7.62	\$9.92	\$9.92
Adult Probation User Fees (Misdemeanants)	IC IC 35-38-2-1(e)	initial \$50 max monthly \$10 to \$20 adm. fee \$50	discretionary for adult misdemeanants placed on probation			
County Alcohol Abuse Deterrent Fund (Limited to Counties Where Circuit Court Has an Alcohol Abuse Deterrent Program)						
Fee	Code Cite	Amount	Type of Case			
Alcohol Abuse Deterrent Program Fee	IC 9-30-9-8	\$400 maximum	if the court has referred the defendant to an alcohol abuse deterrent program			
Medical Fee	IC 9-30-9-8	\$150 maximum	if the court has referred the defendant to an alcohol abuse deterrent program			
County Supplemental Juvenile Probation Services Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Juvenile Probation User Fees	IC 31-40-2-1	initial \$25 to \$100 monthly \$15 to \$30 adm. fee \$100	discretionary for juveniles placed on probation	\$1.37	\$1.45	\$1.45

County User Fee Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Pretrial Diversion Program Fee	IC 33-37-4-1(c)	initial fee \$50 and \$10.00 monthly month	When prosecuting attorney withholds prosecution of a person charged with a misdemeanor if the person agrees to conditions of a pretrial diversion program offered by the prosecutor.	\$3.80	\$4.68	\$4.68
Informal Adjustment Program Fee	IC 31-34-8-8	\$5 to \$15	when juvenile is placed in informal adjustment program prior to delinquency petition filed	\$7.65	\$8.33	\$8.33
Marijuana Eradication Program Fee	IC 33-37-5-7	\$300 max	any conviction under IC 35-48-4 (offenses relating to controlled substances)			
Alcohol and Drug Services Program Fee	IC 12-23-14-16	\$400 max	in criminal, infraction and ordinance violations			
Law Enforcement Continuing Education Program Fee	IC 33-37-5-8	\$3.00	in each criminal conviction and each infraction and ordinance violation			
Drug Court Fee	IC 12-23-14.5-12	\$500 maximum	when defendant is sentenced to a drug court			
Deferral Program Fee	IC 33-37-4-1(e)	initial fee \$52.00 monthly fee \$10	a deferral program for infractions and ordinance violations	\$7.78	\$7.46	\$6.46
Jury Fee	IC 33-37-5-19	\$2.00	in all criminal, infractions or ordinance violations cases when a defendant is found to have been guilty	\$0.69	\$0.93	\$0.93
County Police Pension Trust Fund and County Extradition Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Late Surrender Fees	IC 27-10-2-12	based on percent of bond value assessed against bail bondsman.	Criminal Proceedings when bonded defendant fails to appear in court 50% of fee deposited in Police Pension Trust Fund 50% deposited in a county extradition fund	\$0.76	\$0.93	\$0.93

County Alternative Dispute Resolution Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Alternative Dispute Resolution Fee	IC 33-23-6-1	\$20; mandatory if an alternative dispute resolution program exists in county	party filing a petition for legal separation, paternity, or dissolution of marriage	Only Allen County has charged this fee. In 2004 any county can opt into this fee by presenting a plan for apportionment to the Court Administration.		
County Guardian Ad Litem Fund or Court Appointed Special Advocate Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Guardian Ad Litem Fee	IC 31-40-3-1	\$100 max discretionary	when child is appointed a guardian ad litem or court appointed special advocate	\$0.04	\$0.22	\$0.22
County Supplemental Public Defender Services Fund						
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Supplemental Public Defender Services Fee (Pretrial)	IC 35-33-7-6	felon \$100 misdemeanant \$50 mandatory	when a criminal defendant requests a public defender and the court finds that the person is able to pay part of the cost of legal representation	\$1.14	\$1.42	\$1.42
Supplemental Public Defender Services Fee (Postconviction)	IC 33-37-2-3	not more than the cost of defense services rendered for defendant	criminal cases where person is convicted			

### Penalties Assessed by Courts of Record

State Common School Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Criminal Fines	IC 21-1-3-7	Maximum Fines: All felonies \$10,000 Misdemeanors Class A \$5,000 Class B \$1,000 Class C \$500	Felonies and Misdemeanors Convictions	\$6.03	\$6.13	\$6.9
State Highway Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Infraction Judgments for Overweight Vehicles	IC 9-20-18-12(f)	\$10,000 (class A) \$1,000 (Class B) \$500 (Class C)	infractions for driving an overweight trucks	\$1.15	\$1.53	\$1.1
State General Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	2000	2001	2002
Infraction Judgment	IC 34-28-5-4	\$10,000 (class A) \$1,000 (Class B) \$500 (Class C) \$25 (Class D)	when infraction judgments are entered against defendants	\$11.05	\$13.69	\$14.
County General Fund				Reported Revenue		
Fee	Code Cite	Amount	Type of Case	1999	2000	2001
Civil Penalties for Ordinance Violations	IC 36-1-3-8	less than \$2,500		\$0.18	\$0.10	\$0.0

**LEGISLATIVE SERVICES AGENCY**  
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**MEMORANDUM**

**To:** Senator Richard Bray  
**From:** Mark Goodpaster  
**Re:** Revenue Loss to the State General Fund if Infractions in City and Town Courts Become Local Ordinance Violations  
**Date:** September 22, 2004

You requested an estimate of the fiscal impact if more traffic infractions that are currently disposed in city and town courts are treated instead as local ordinance violations. This memorandum is divided into three parts to answer the question.

- The first part describes the legal authority that the state and local units of government have to establish speed limits.
- The second part describes past trends in infractions in city and town courts.
- The third part identifies the two types of revenue that the State General Fund could lose and presents an estimate of what this revenue loss might be.

In general, I estimate that the revenue loss will range between \$3.8 and \$5.7 million per year under the scenario I describe in this memo.

**The Legal Authority of Local Units of Government to Change Speed Limits**

By statute, the maximum speed limits on roads depend on the type of road and whether the road is located inside or outside an urban area. IC 9-21-5-2 specifies that there are three types of roads: alleys, streets or highways, and interstates and that speed limits vary depending on whether the road is located inside or outside of an urban area. IC 9-21-5-6 allows for local authorities to either increase or reduce the maximum allowable speeds within an upper and lower range based on traffic and engineering studies. IC 9-21-1-2 restricts a local authority from duplicating the speed limit by ordinance.

The following table illustrates the maximum speed specified in statute and the lower and upper ranges that a local authority may adjust these speeds.

Type of Roadway		Maximum Vehicular Speed in Miles Per Hour		
		Minimum set by <u>Local Authority</u>	<u>Set by Statute</u>	Maximum set by <u>Local Authority</u>
Alley		5 (IC 9-21-5-6(a)(4))	15 (IC 9-21-5-2(5))	30 (IC 9-21-5-6(a)(5))
Street or Highway	Inside Urban Area	15 (IC 9-21-5-6(a)(1))	30 (IC 9-21-5-2(1))	55 (IC 9-21-5-6(a)(2))
	Outside Urban Area	30 (IC 9-21-5-6(a)(3))	55 (IC 9-21-5-2(2))	

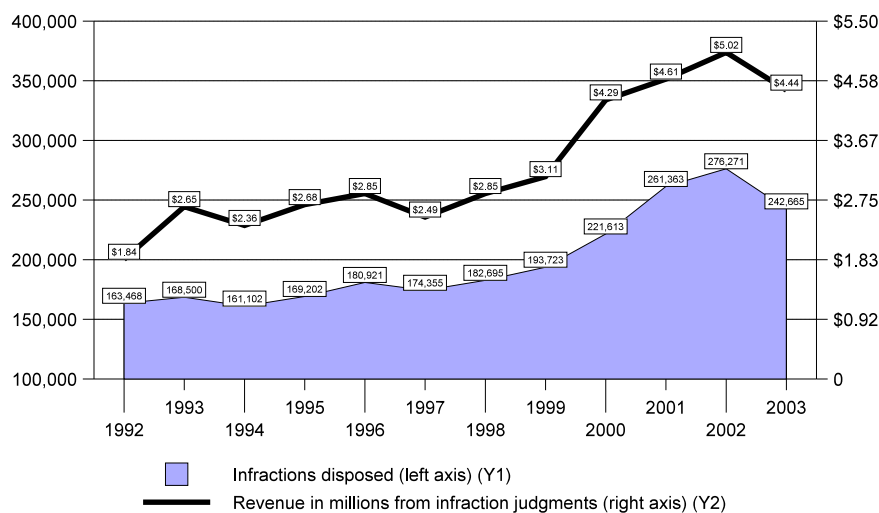
Type of Roadway		Maximum Vehicular Speed in Miles Per Hour		
		Minimum set by Local Authority	Set by Statute	Maximum set by Local Authority
Interstate Highway	Inside Urban Area		55 (IC 9-21-5-2(2))	
	Outside Urban Area		65 (IC 9-21-5-2(2))	

If local authorities make no change in the speed limits on any of these roadways, then violations of these speed limits result in Class B infractions when the speed limit is exceeded in a school or highway work site zone and Class C infractions in all other cases. (IC 9-21-5-13)

When vehicles exceed speed limits in areas where a local unit of government have changed the speed limit, then “a fine assessed for a violation of a traffic ordinance adopted by a local authority may be deposited into the general fund of the appropriate political subdivision.” (IC 9-21-1-2(c))

#### Trends in Infractions Dispositions in City and Town Courts:

The following table demonstrates a strong relationship between the number of cases disposed and the revenue collected from infraction judgments in city and town courts (source: Office of State Court Administration, Indiana Supreme Court). Between 1995 and 2002, as the number of cases disposed increased by 41%, the revenue from infraction judgments increased by 66%. Between CY 2002 and 2003, when dispositions decreased by 10%, revenues from infraction judgements declined by 12%.



#### Dispositions from Infractions Generate Revenue from Court Fees and Infraction Judgements

There are two sources of revenue from infraction dispositions: infraction judgements and court fees.

**Infraction Judgments:** The following shows the maximum amounts of judgements that can be assessed under IC 34-28-5-4 when a person is found guilty of an infraction:



Infraction Class	Maximum Judgment
A	\$10,000
B	\$1,000
C	\$500
D	\$25

**Court fees:** The court fee for either infractions or local ordinance violations is \$70 (IC 33-37-4-2). From city and town courts, the state General Fund receives 55% of the court fee, or \$38.50 (IC 33-37-7-8).

#### **What Happens If Fewer Infractions are Disposed in City and Town Courts?**

If more municipal governments change the maximum speed limits in their jurisdictions, then speeding tickets would be handled as ordinance violations rather than infractions.

The first source of revenue that would be lost would come from infraction judgments that would no longer be imposed against a defendant against whom a judgment has been entered. As the chart above shows, there is a strong relationship between the number of infractions disposed and the infraction judgements. If there are fewer infractions disposed, then less money from infraction judgments will be collected by the state.

Secondly, potentially fewer court fees might be collected in the cases of municipal ordinance violations. Fewer court fees could result if ordinance violations are disposed under a local ordinance violations bureau, which may be created under IC 33-36-2. Local ordinance violations bureaus allow a person to pay a fine, fee or judgment without having to appear in court. In addition, IC 33-36-3-6 specifies that

*An ordinance violation costs fee may not  
be collected from the defendant under IC 33-37-4.*

Consequently, for every case that would be disposed by a local ordinance violations bureau instead of in a trial court, the state would lose \$38.50 (\$70 x 55%).

#### **The Potential Revenue Loss to the State General Fund**

There are three pieces of information that are not collected on a systematic basis that are needed to make this revenue loss estimate more precise.

- The number of traffic infractions that are disposed in city and town courts.
- The number of cases disposed in which the defendant was convicted and actually paid the judgement.
- The number of infraction violations that are occurring in areas where cities and towns could change the speed limit making these speed violations ordinance violations rather than infractions.

To estimate the revenue loss from court fees, the following assumptions are made:

- Between 50% and 75% of infractions that are disposed in city and town courts could be made into ordinance violations.
- 90% of the infractions are traffic cases.

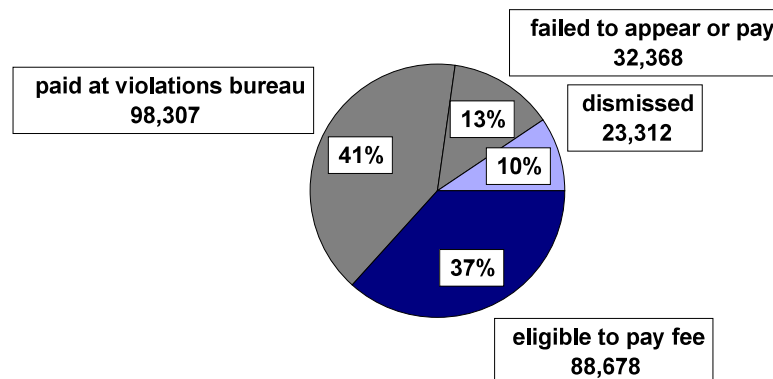
**Loss from Infraction Judgments:** The estimated loss depends on the number of infraction judgements no longer disposed multiplied by the average revenue collected per judgment. The average revenue per infraction is roughly \$25 based on the 2003 Judicial Report. Assuming a range of between 50% and 75% of these infractions would be disposed as ordinance violations, the potential revenue loss could range between \$2.1 and \$3.2 million.

percent affected:		infractions disposed		percent speed violations		average revenue per infraction		potential revenue loss in millions:
50%	x	187,985	x	90%	x	\$25	=	\$2.11
75%	x	187,985	x	90%	x	\$25	=	\$3.17

**Loss from Court Fees:** Any potential loss would be caused by infractions being disposed in an ordinance violations bureau and being exempt from the court fee.

The pie chart below shows each of these methods of disposal and the number of cases remaining where the defendant might be eligible to pay.

Method of Disposition of Infractions and Local Ordinance Violations  
in City and Town Courts in CY 2003



In CY 2003, 98,300 infractions judgments were paid at a violations bureau. If these infractions were disposed as ordinance violations, then they would be exempt from any court fee (IC 33-36-3-6).

Consequently, the potential revenue loss would range between \$1.7 and \$2.5 if between 50% and 75% of these infractions were disposed as ordinance violations.

percent affected:		infractions paid at local violations bureau		percent speed violations		court fees per case		potential revenue loss in millions:
50%	x	98,307	x	90%	x	\$38.50	=	\$1.70

percent affected:		infractions paid at local violations bureau		percent speed violations		court fees per case		potential revenue loss in millions:
75%	x	98,307	x	90%	x	\$38.50	=	\$2.55

**Total Loss:** The combined revenue loss from both the loss in court fees and infraction judgements could range between \$4 and \$6 million if all traffic infractions are treated as local ordinance violations.

	Infraction Judgements		Court Fees		Total Revenue Loss
Low Range	??	+	??	=	ERR
High Range	??	+	??	=	ERR